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Morvarid Ahmadi

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**MORVARID AHMADI,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**PERFORMANT
RECOVERY, INC.,**

Defendant.

Case No.: '13CV1663 LAB KSC

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO CALIFORNIA
PENAL CODE § 632.7**

JURY TRIAL DEMANDED

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INTRODUCTION

1. MORVARID AHMADI (“Plaintiff”) brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of PERFORMANT RECOVERY, INC. and its related entities, subsidiaries and agents (“Defendant”) in willfully employing and/or causing to be employed certain recording equipment in order to record the telephone conversations of Plaintiff without the knowledge or consent of Plaintiff, in violation of California Penal Code § 632.7 thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to their own acts and experiences, and, as to all other matters, upon information and belief, including the investigation conducted by his attorneys.
2. California Penal Code § 632.7 prohibits one party to a telephone call from intentionally recording the same conversation without the knowledge or consent of the other while the person being recorded is on a cellular telephone. There is no requirement under California Penal Code § 632.7 that the communication be confidential. Plaintiff alleges that Defendant continues to violate Penal Code § 632.7 by impermissibly recording its telephone conversations with California residents while said residents are on cellular telephones.

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JURISDICTION AND VENUE

3. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of the State of California, seeks relief on behalf of a National class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in the State of California. Plaintiff also seeks the greater of statutory damages of \$5,000 per violation or three times actual damages per violation pursuant to Penal Code § 637.2(a), which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
4. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391 because Defendant does business in the County of San Diego which is within this Court’s jurisdiction.

PARTIES

5. Plaintiff is, and at all times mentioned herein was, an individual citizen and resident of the State of California.
6. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose principal place of business and State of Incorporation are in Livermore, California. Defendant has a policy and practice of recording telephone conversations with the public, including California residents. Defendant’s employees and agents are directed, trained and instructed to, and do, record cellular telephone conversations with the public, including California residents.

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FACTUAL ALLEGATIONS

7. Defendant is, and at all times mentioned herein was, a professional corporation. Plaintiff is informed and believe, and on the basis of that information and belief allege, that at all times mentioned in this Complaint, Defendants were the agents and employees of their co-defendants, and in doing the things alleged in this Complaint, were acting within the course and scope of that agency and employment.
8. At all times relevant, Plaintiff was an individual residing within the State of California.
9. On or about June 18, 2013, Plaintiff received a telephonic communication from Defendant's representative, "Erin Cruz," on Plaintiff's cellular telephone attempting to collect an alleged debt alleged to be owed by Plaintiff.
10. After discussion of Plaintiff's private financial information, Plaintiff inquired as to whether the June 18, 2013 telephonic communication was being recorded. Only after Plaintiff's inquiry on the matter did Defendant inform Plaintiff that Defendant records all telephonic communications with consumers, including California consumers.
11. When Defendant initiated the telephonic communications, Defendant did not immediately warn Plaintiff that said telephonic communications would be recorded.
12. Plaintiff is accustomed to, and expects to, hear such warnings prior to being recorded.
13. Only after Plaintiff inquired as to whether or not the June 18, 2013 telephonic communication was being recorded, Defendant's agent confirmed that Plaintiff was being recorded. Plaintiff terminated the telephonic communication immediately thereafter.

14. At no point during the confidential conversation with Plaintiff was Plaintiff warned by Defendant that Defendant was recording the telephonic communications. At no point during the telephonic communication did Plaintiff consent to being recorded.
15. During the conversation with Defendant, Plaintiff discussed highly confidential financial information that Plaintiff had not openly discussed with others.
16. Plaintiff had no reasonable expectation that the telephone conversation with Defendant would be recorded due to the private subject matter being discussed.
17. Plaintiff was shocked to discover that such a confidential communication was being recorded by Defendant without Plaintiff's knowledge or consent.
18. Plaintiff found Defendant's clandestine recording to be highly offensive due to the delicacy of the topics discussed during said conversations.
19. The conversation with Plaintiff was without Plaintiff's knowledge or consent, recorded by Defendant, causing harm and damage to Plaintiff. Plaintiff was not informed at the outset of Plaintiff's telephonic communication that Plaintiff's telephone calls were being recorded. At no time during the call did Plaintiff give consent for the telephone call to be recorded.
20. Plaintiff is informed and believes, and thereon alleges, that during the relevant time period, Defendant has had a policy and a practice of recording telephone conversations with consumers. Defendant's employees and agents are directed, trained and instructed to, and do, record telephone conversations with the public, including Plaintiff and other California residents.
21. Plaintiff is informed and believes, and thereon alleges, that during the relevant time period, Defendant has had all of its calls to the public,

including those made to California residents, recorded without the knowledge or consent of the public, including Plaintiff and other California residents.

22. Defendant's conduct alleged herein constitutes violations of the right to privacy to the public, including Plaintiff and other California residents, and California Penal Code § 630 *et seq.*

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated ("The Class").

24. Plaintiff represent, and are members of, "The Class" defined as follows: "All persons in California whose inbound and/or outbound cellular telephone conversations were recorded without their consent by Defendant within one year prior to the filing of the original Complaint in this action."

25. Defendant, and its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believe this number to be in the tens of thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

26. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of The Class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserve the right to expand The Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

27. The joinder of The Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the Court. The Class can be identified through Defendant's records.

- 1 28. There is a well-defined community of interest in the questions of law and
2 fact involved affecting the parties to be represented. The questions of law
3 and fact to The Class predominate over questions which may affect
4 individual Class members, including the following:
- 5 a. Whether Defendant has a policy of recording incoming and/or outgoing
6 calls made to cellular telephones;
 - 7 b. Whether Defendant discloses to callers and/or obtains their consent that
8 their incoming and/or outgoing cellular telephone conversations were
9 being recorded;
 - 10 c. Whether Defendant's policy of recording incoming and/or outgoing calls
11 constituted a violation of California Penal Code §§ 632.7 and/or 637;
 - 12 d. Whether Defendant's policy of recording incoming and/or outgoing calls
13 constitutes an invasion of privacy;
 - 14 e. Whether Plaintiff and The Class were damaged thereby, and the extent of
15 damages for such violations; and
 - 16 f. Whether Defendants should be enjoined from engaging in such conduct
17 in the future.
- 18 29. Plaintiff is asserting claims that are typical of The Class because every other
19 member of The Class, like Plaintiff, was exposed to virtually identical
20 conduct and are entitled to the greater of statutory damages of \$5,000 per
21 violation or three times actual damages per violation pursuant to Penal Code
22 § 637.2(a).
- 23 30. Plaintiff will fairly and adequately represent and protect the interests of The
24 Class in that Plaintiff has no interest antagonistic to any member of The
25 Class. Plaintiff has retained counsel experienced in handling class action
26 claims to further ensure such protection.
- 27 31. Plaintiff and the members of The Class have all suffered irreparable harm as
28 a result of the Defendant's unlawful and wrongful conduct. Absent a class

1 action, The Class will continue to face the potential for irreparable harm. In
2 addition, these violations of law will be allowed to proceed without remedy
3 and Defendant will likely continue such illegal conduct. Because of the size
4 of the individual Class member's claims, few, if any, Class members could
5 afford to seek legal redress for the wrongs complained of herein.

6 32. A class action is a superior method for the fair and efficient adjudication of
7 this controversy. Class-wide damages are essential to induce Defendant to
8 comply with federal and California law. The interest of The Class members
9 in individually controlling the prosecution of separate claims against
10 Defendant is small because the maximum statutory damages in an individual
11 action for violation of privacy are minimal. Management of these claims is
12 likely to present significantly fewer difficulties than those presented in many
13 class claims.

14 33. Defendant has acted on grounds generally applicable to The Class, thereby
15 making appropriate final injunctive relief and corresponding declaratory
16 relief with respect to The Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **INVASION OF PRIVACY: VIOLATION OF PENAL CODE § 632.7**

19 34. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.

21 35. Californians have a constitutional right to privacy. Moreover, the California
22 Supreme Court has definitively linked the constitutionally protected right to
23 privacy within the purpose, intent and specific protections of the Privacy
24 Act, including specifically, Penal Code § 632. "In addition, California's
25 explicit constitutional privacy provision (Cal. Const., 1 § 1) was enacted in
26 part specifically to protect California from overly intrusive business
27 practices that were seen to pose a significant and increasing threat to
28 personal privacy. (Citations omitted). Thus, Plaintiff believe that California

1 must be viewed as having a strong and continuing interest in the full and
2 vigorous application of the provisions of section 632 prohibiting the
3 recording of telephone conversations without the knowledge or consent of
4 all parties to the conversation.

5 36. California Penal Code § 632.7 prohibits in pertinent part “[e]very person
6 who, without the consent of all parties to a communication...intentionally
7 records, or assists in the...intentional recordation of, a communication
8 transmitted between...a cellular radio telephone and a landline telephone.”
9 Thus, on its face, California Penal Code § 632.7 precludes the recording of
10 all communications involving a cellular telephone.

11 37. Though similar, California Penal Code § 632 and 632.7 are not duplicative
12 and protect separate rights. California Penal Code § 632.7 grants a wider
13 range of protection to conversations where one participant uses a cellular
14 phone or cordless phone. For example, the “confidential communication”
15 requirement of California Penal Code § 632 is absent from California Penal
16 Code § 632.7

17 38. Plaintiff is informed and believes, and thereupon alleges, that Defendant
18 employed and/or caused to be employed certain recording equipment on the
19 telephone lines of all employees, officers, directors, and managers of
20 Defendant.

21 39. Plaintiff is informed and believes, and thereupon alleges, that all these
22 devices were maintained and utilized to record each and every incoming and
23 outgoing telephone conversation over said telephone lines.

24 40. Said recording equipment was used to record the cellular telephone
25 conversations of Plaintiff and the members of The Class, all in violation of
26 California Penal Code § 632.7.

27 41. At no time during which these cellular telephone conversations were taking
28 place between Defendant or any employee, agent, manager, officer, or

1 director of Defendant, and any other person, did Defendant inform Plaintiff
2 or any other member of The Class recording of their cellular telephone
3 conversations were taking place and at no time did Plaintiff or any other
4 member of The Class consent to this activity.

5 42. Defendant, knowing that this conduct was unlawful and a violation of
6 Plaintiff and the members of The Class' right to privacy and a violation of
7 California Penal Code § 630, *et seq.*, did intrude on Plaintiff and the
8 members of The Class' privacy by knowingly and/or negligently and/or
9 intentionally engaging in the aforementioned intercepting, eavesdropping,
10 listening, and recording activities relative to the telephone conversations
11 between Plaintiff and The Class members, on the one hand, and Defendant
12 on the other hand, as alleged herein above.

13 43. Based on the foregoing, Plaintiff and the members of The Class are entitled
14 to, and below herein do pray for, their statutory remedies and damages,
15 including but not limited to, those set forth in California Penal Code § 637.2.

16 44. Because this case is brought for the purposes of enforcing important rights
17 affecting the public interest, Plaintiff and The Class seek recovery of their
18 attorney's fees pursuant to the private attorney general doctrine codified in
19 Code of Civil Procedure § 1021.5, or any other statutory basis.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
22 Class members the following relief against Defendant:

- 23 • That this action be certified as a class action on behalf of The Class and
- 24 Plaintiff be appointed as the representative of The Class;
- 25 • For \$5,000 per violation of California Penal Code § 632.7 for Plaintiff
- 26 and each member of The Class;

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- Injunctive relief in the form of an order requiring Defendant to disgorge all ill-gotten gains and awarding Plaintiff and The Class full restitution of all monies wrongfully acquired by Defendant by means of such unfair and unlawful conduct;
- That the Court preliminarily and permanently enjoin Defendant from recording, each and every oncoming and outgoing cellular telephone conversation with California residents, including Plaintiff and The Class, without their prior consent, as required by California Penal Code § 630, *et seq.*, and to maintain the confidentiality of the information of Plaintiff and The Class;
- For general damages according to proof;
- For special damages according to proof;
- For exemplary or punitive damages;
- For costs of suit;
- For prejudgment interest at the legal rate; and
- For such further relief as this Court deems necessary, just, and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 16, 2013

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
ATTORNEY FOR PLAINTIFF